

H.E. PROPOSED ORDER

that none of the problems, moreover, was of a magnitude that would prevent a finding of operational readiness.

With respect to AT&T's complaints, Ameritech argues that AT&T never mentions that its ability to process orders successfully has improved dramatically over the first four months of the year. Ameritech further contends that AT&T never mentions the efforts which Ameritech has made to resolve its systems issues, such as the work-arounds which Ameritech Illinois implemented -- at its expense -- to solve problems in AT&T's systems.

With respect to the "double-billing" problem discussed by AT&T and MCI, Ameritech responds that it is attempting diligently to identify those AT&T customers who may have been subjected to double billing, so that bill credits can be issued.

Ameritech questions MCI's opposition to OSS readiness because MCI is well behind AT&T, having only just completed testing of the electronic ordering interfaces. In particular, most of MCI's complaints are based on AT&T's testimony or relate to interfaces that it does not yet use. As an example of this, Ameritech cites MCI's contention that the electronic ASR interface for unbundled loops is inadequate. Ameritech states that MCI is not yet ordering unbundled loops and has not even begun to test the interface. Ameritech states that in contrast, the CLECs that do use it -- CCT and MFS -- generally testified that it works well. (Tr. 877, 1009). Ameritech maintains that successful use of this interface by existing CLECs provides far more relevant information than fabricated complaints by potential users.

Ameritech also characterizes Sprint's position as disingenuous. It contends that at the same time that it complains that it must have electronic interfaces now and that Ameritech's are not acceptable, Sprint has taken the position nationally that it will not implement any electronic interfaces until the standard-setting bodies have completed their work and all LECs agree to adhere to them. Ameritech contends that since national standards will not be available for several months and will require implementation work beyond that, Sprint is in no position to complain in this proceeding that Ameritech's current interfaces or systems are inadequate.

Ameritech argues that Staff's position accords no credit to Ameritech's efforts over the last few months to resolve problems with the CLECs and to expand both carrier testing and actual use of the Company's interfaces. It contends that Staff has not made a fair review of the facts as they exist today.

Ameritech also defends its retention of the Andersen team to review the operational readiness and capacity of its OSS interfaces, and the information which has been supplied to CLECs. The focus of this massive work effort, which involved 34 professionals who spent approximately 35,000 work hours collectively, was the interfaces themselves; they did not address the downstream "legacy" systems or any problems associated therewith.

Ameritech contends that the scope of the Andersen team's review was not too narrow, because it was directed only at the interfaces themselves and not at the "legacy systems". Ameritech argues that its fundamental obligation under the FCC's rules and regulations is to provide access to its OSS functionalities and to publish the interface specifications required to permit such access. Ameritech argues that nowhere does the FCC refer to the "legacy systems". Thus, Ameritech maintains that the fact that the Andersen team concluded that the interfaces were fully operational and had sufficient capacity to meet marketplace demand is highly relevant to the Commission's decision in this proceeding.

Ameritech, however, states that the performance of its legacy systems is relevant and those issues were addressed in detail by other witnesses. It rejects the notion that the Andersen analysis should be dismissed merely on the grounds that other issues exist.

Similarly, Ameritech defends the fact that the Andersen Team did not review the "problem logs" prior to April 4 is not significant. It maintains that their review was addressed to the interfaces whereas the problem logs primarily involved end-to-end problems that resulted from the legacy systems.

Ameritech also takes exception to the parties contention that CLECs should have been interviewed as part of their analysis. Ameritech argues that whether the CLECs were interviewed is irrelevant in evaluating the Andersen team's work product. It opines that it is unlikely that the opposing parties would have cooperated freely with each others' outside experts and provided input untainted by litigation considerations. Ameritech insists that it certainly would not have happened in the current, highly charged checklist environment, and the parties know that full well.

Furthermore, with respect to any argument that the Andersen Team was biased, Ameritech responds that Arthur Andersen and Andersen Consulting have well-established, international reputations to consider. Those reputations would be damaged if they were to support testimony or affidavits which did not reflect the facts fully and accurately, as they understood them. Thus, Ameritech contends that the IXCs' bias argument should be dismissed.

Ameritech states that the fact that USN has not placed it into commercial operation and/or does not use it when the customer is on the line is irrelevant to the question of whether the preordering function is operational. It contends that USN's business practice of accessing CSRs after the end-user customer contact is not significant operationally. Ameritech states that the issue is whether CLECs can obtain ready, on-line access to CSRs whenever they want to. It asserts that the interface works, regardless whether the end-user customer contact has ended, or the customer is still on the line. Ameritech maintains that the CLEC's means of access is exactly the same in both scenarios. It further states that, the IXCs' implication that USN's decisions reflect an inadequacy in the interfaces is factually inaccurate. Ameritech argues that USN has

H.E. PROPOSED ORDER

simply chosen not to make commercial use of the telephone number and due date functions at this time due to internal business reasons.

Ameritech also disputes MCI's claims that CLECs subscribing to unbundled loops cannot use an electronic interface for preordering. It states that CLECs have precisely the same electronic preordering options available to them for unbundled loop as for resale. However, they do not need all of the preordering functionalities. As an example Ameritech cites that fact that facilities-based CLECs have their own switch and their own blocks of telephone numbers and, therefore, do not need Ameritech central office feature availability guide or telephone number selection feature.

With respect to ordering, Ameritech maintains that the extent to which it manually reviews service orders after they have been electronically received is a business decision, not an OSS compliance issue. According to Ameritech, it simply is not cost-effective to mechanize all internal transactions.

Regarding AT&T's argument that with manual processing come more errors, Ameritech responds that the document to which AT&T refers (AT&T Cross Ex. 32) identified eight orders where a service representative made a mistake -- out of more than 10,000 orders which AT&T sent to Ameritech in April alone. Ameritech argues that it has never claimed that its service representatives never make a mistake, but they do not make mistakes on a broad-scale basis, and there is no systematic relationship between manual review and incorrectly processed orders.

Ameritech denies MCI's contention that for a number of its "migration" orders, Ameritech "unexplainably" added or dropped certain features on the customers' accounts. Ameritech explained that resale accounts migrated to a CLEC may include services that are not subject to resale, such as voice mail; since they cannot be migrated "as is", they are dropped from the account. It notes that, on the other hand, some services must be subscribed to even if not ordered by the CLEC, such as touch tone. Such services are added in the ordering process. Therefore, the addition or loss of features is an expected part of the process -- not a system error.

With respect to MCI's and AT&T's contention that Ameritech has not been meeting its due dates for CLEC orders, it asserts that both are factually incorrect. Ameritech asserts that AT&T's contention regarding due dates is highly misleading. Rather than masking its actual due date performance by changing order due dates unilaterally, as AT&T alleges, Ameritech argues that the situation arises out of AT&T's failure to implement the preordering interface which allows on-line access to due date availability. According to Ameritech, when AT&T submits a service order, AT&T unilaterally assigns it a due date which it has neither discussed nor negotiated with Ameritech. Ameritech asserts that as a result of this, that date may not be realistic. Ameritech further notes that AT&T had never communicated any dissatisfaction with this process to until its April 21 testimony was filed in this proceeding and, therefore, the problem reflects litigation strategy, not real-world operational concerns. See Tr. 1939.

Finally, Ameritech states that the due date differential between wholesale customers and retail customers resulted from atypical performance in February -- due to unusual weather problems (i.e. rains and flooding), disproportionate due date delays incurred by new and/or smaller carriers and a low volume of CLEC orders overall. It emphasizes that by March, however, these problems had been resolved, and the March data better reflect ongoing operations. See Ameritech Ex. 8.2, p. 22. Furthermore, Ameritech asserts that there is a correlation between disparate wholesale/retail missed due dates and low order volume by the CLECs. This is because a relatively small, absolute number of missed wholesale due dates will disproportionately affect overall percentages disproportionately if the CLEC base volume is also small.

Ameritech states that it is baffled by TCG's complaint that it cannot use an electronic interface to order unbundled loops. It argues that TCG has access to precisely the same ASR interface which MFS and CCT use and, in fact, has sent test orders over it. Similarly, Ameritech states that it does not understand TCG's claim that it cannot use the repair and maintenance interface to report access service troubles on DS-1's and DS-3's. The T1M1 interface is available to them today, just as it is to the IXC's.

With regard to provisioning and AT&T's complaint that the amount of backlogged "855" order confirmation increased during the last two weeks of April when its order volume increased substantially, Ameritech responds that the problem was the result of problems in AT&T's systems, not Ameritech Illinois'. Ameritech argues that for the first three weeks of April, AT&T's order levels generally fell in the range of 200-300 orders per day. (Al Am. Ill. Cross Ex. 5). Ameritech states that on April 23, with virtually no notice to the Company, AT&T sent 2,156 orders late in the day. It further states that between April 24 and May 5, AT&T's order volume fell consistently in the 1,000 - 2,000 range, with a one-day high of 3,770 orders on April 29. Ibid.; See also Tr. 1948. Ameritech argues that this was the result of problems in AT&T's systems which had failed to release orders to the RBOCs properly, resulting in an enormous backlog in AT&T's systems. See Tr. 2076.

Ameritech states that any time a carrier increases its order activity by almost 1000% in the space of 24 hours, some processing adjustments are likely to be required. It explained that its wholesale ordering staff is sized to meet expected demand distributed normally over the work day and work week and in this instance it received two weeks worth of AT&T demand in one hour. Ameritech argues that in that situation, it is hardly unreasonable for the system to slow down temporarily. It notes, however, that all of the orders were processed and it is augmenting its manual processing capabilities to meet the new level of demand being presented by AT&T.

In addition, Ameritech asserts that AT&T's definition of "delayed" (i.e. receipt within 24 hours) is inappropriate. Ameritech states that under the performance standards established in the AT&T arbitration proceeding, firm order confirmations are due within four days of receipt of the order not within 24 hours. Thus, Ameritech argues that many

H.E. PROPOSED ORDER

of the 855's which AT&T complains about were not even "late" by the standard to which AT&T previously agreed.

With respect to repair and maintenance interfaces, Ameritech disputes Staff's contention that use of the T1M1 interface by its payphone unit does not establish operational readiness. Ameritech states that the GUI interface had originally been developed for smaller IXC's to report access service troubles. Ameritech asserts that only minor, mostly cosmetic, changes were required to adapt it to local service trouble reporting, and nothing unique was done for its payphone unit. Ameritech notes that AIIIS has since installed the same capability on CCT's premises, providing it with precisely the same benefits the payphone unit received from AIIIS' development efforts.

With respect to the issue of double billing, Ameritech notes that its response to this problem has been far more immediate and forthcoming than the IXC's would lead the Commission to believe. Considerable manhours have been devoted to clearing the "3E" backlog and to implementing process changes that will prevent the potential for double-billing from occurring in the future. Ameritech, however, complains that to issue bill credits to customers, Ameritech Illinois, AT&T and MCI must compare their customer account billing data to identify which customers were double billed and for what periods and AT&T has not been forthcoming in this process.

Commission Conclusion

In determining whether Ameritech meets this checklist item requires the Commission to cut through the extensive record to determine the actual status of Ameritech's OSS. The IXC's position is clear Ameritech is nowhere near being able to meet this checklist item. On the other hand, Ameritech contends that its OSS has been operationally ready for some time. The distance between the two positions is amazing in light of the fact that the performance results reported in the record are concrete in nature. The confusion lies in the way that each party characterizes each particular problem. To Ameritech a problem is actually a "bug" that can or has been worked out. To the other parties, the same problem is an unmitigated disaster.

As a prime example the Commission cites AT&T's contention that as AT&T's order volumes ramped up, Ameritech's performance deteriorated. Ameritech explained that this "ramp" was almost vertical. From a level of 200-300 orders per day that Ameritech received during the first three weeks of April, Ameritech without notice suddenly received 2,156 orders on April 23. This important fact was left out by AT&T. Is the problem as serious as AT&T characterizes? The Commission is of the opinion that it is unreasonable to contend that an 1000% increase in orders will not cause any problems. We must hold Ameritech to a reasonable standard. This means that Ameritech must be able to handle reasonable fluctuations in demand. The record indicates that Ameritech can do so.

H .E. PROPOSED ORDER

In cutting through the posturing of the various parties, the Commission will first review the concrete numbers that are not in dispute. From this concrete data, we can formulate our own conclusions with respect to OSS. Following is a summary of the current status of each interface in concrete terms:

1. With respect to the pre-ordering interface, USN has tested and currently is using the pre-ordering interface. Since January 1, 1997, a total of 7685 transactions have successfully traversed successfully, this interface, 1677 in January, 2053 in February, and 3955 in March.
2. With respect to the EDI ordering and provisioning interface, the following carriers have tested and currently are using the EDI ordering and provisioning interface: AT&T, MCI Metro, Network Recovery Services ("NRS") and USN. Another carrier, The Millenium Group, also is using the interface. These carriers are using the ordering, firm order confirmation ("FOC") and order completion functionalities of this interface.
3. During the period from January 1, through March 31, 1997, a total of 3838 resale orders were received electronically over the EDI ordering and provisioning interface. Of these, 3179, or 82.8%, were successfully processed and of these, 1946 orders were processed successfully without manual intervention. The Other 1233 orders were processed successfully with manual intervention. The remaining 659 orders were rejected.
4. With respect to the ASR ordering and provisioning interface, the following carriers have tested and are using the ASR interface to order unbundled loops and end office integration ("EOI"): Brooks Fiber, CCT, MFS and TCG. An additional carrier, ICG, has tested and is using the ASR interface just for ordering EOI. Ameritech maintains that between January 1, and March 28, 1997, 7539 orders for unbundled loops were received and successfully processed.
5. The maintenance and repair electronic interfaces are not in use by any local exchange carriers, because none has requested to use it. An Ameritech affiliate, Ameritech Pay Phone Services ("PPS") is using the interface. Between January 1, and March 30, 1997, 10,366 trouble reports were successfully received by Ameritech.
6. With respect to the electronic interfaces for billing, during the time period between January 1, and March 26, 1997, approximately 27 million records were transmitted via the EMR daily usage interface. The carriers using this interface are: AT&T, Brooks Fiber, CBG, CCT, CimcoComm, Coast-to-Coast, ICG, LCI, MCI and MFS, The Millenium Group, NRS, OneStop, UnitedComm, USN, WinStar. The AEBS billing interface has been used in the same period for 34 transmissions, which occur on a monthly basis, by

H.E. PROPOSED ORDER

the same carriers except for Brooks and CCT. The CABS billing interface currently is in use by Brooks Fiber, CCT and MFS.

7. During the time period from January through March 1997, approximately 50% of the orders received electronically were processed electronically as planned. The other 50% of the electronic orders were either placed manually or were rejected.
8. AT&T's order rejection rate has fallen from 34.4% in January 1997, to 27.1% in February, to 12.7% in March and to 5.4% in April. On April 29 -- when Ameritech Illinois processed a one-day high of 3,830 resale orders -- only 1.4% were rejected.

These data indicate that Ameritech has made significant progress with respect to OSS availability. Nonetheless, significant issues raised by the parties remain and the Commission will address these one at a time. The first issue is the high percentage of manual intervention that is the norm rather than the exception. We are Commission is of the opinion that a high percentage of manual intervention is not necessarily an indication that OSS is not ready operationally. The record indicates that manual processing is slower, to some extent, than electronic processing. However, the record does not indicate, as AT&T alleges, that manual processing is unreliable. There were eight orders where an Ameritech service representative made a mistake out of more than 10,000 orders which AT&T sent to Ameritech in April. This clearly indicates that reliability is not a problem at this point in time.

The issue with respect to manual intervention is whether it will prevent Ameritech from providing these services at a quality level that is at parity with the quality that it provides these services to itself. The answer is yes for the interim period between now and the time that industry standard interfaces are available. There is no evidence that manual intervention affects quality, other than the unsubstantiated conclusions made by the parties, and AT&T's quantity argument already discussed above. There also is some merit to Ameritech's claim that for the time being, it is more economical to handle some transactions manually rather than to try to mechanize it. The Commission finds persuasive the testimony of both Mr. Meixner and Ms. Foerster that some manual treatment is common in other industries.

The second issue is whether external testing is necessary before a particular interface can be deemed operational. Staff insists that without carrier to carrier testing, an interface cannot be considered operational. The Commission disagrees. Although the Commission agrees with Staff that carrier-to-carrier testing is important, Staff's position does not take into account the situation where, as is the case with the repair and maintenance interface, no party has requested the interface. Under Staff's view, Ameritech can be held hostage by its competitors if they simply not order a particular functionality. This view is unreasonable and inconsistent with this Order's definition of "is providing" as defined earlier in this Order.

The Commission is of the opinion that where carrier-to-carrier testing cannot be performed, the Commission will look to other factors such as internal testing and expert testimony. With respect to the repair and maintenance interface, the Commission is satisfied with Ameritech's internal testing and the review of the Andersen Team, which indicates that the interface will function as planned.

Regarding Staff's objection to the use of APS for the repair and maintenance interface, the Commission does not agree that Ameritech's experience with APS is irrelevant. Other than making a conclusory statement that the relationship between Ameritech and APS is not arms-length, Staff does not state why it categorically rejects this experience, when no other information is available. As stated above, this position is unreasonable because it allows competitors to decide whether Ameritech is meeting the checklist. The record indicates that APS is currently using this interface to report service problems to Ameritech in exactly the same manner as which a CLEC would.

With respect to MCI's argument that there are too many interfaces, the Commission agrees. Nonetheless, MCI has not shown how this will affect the quality of service that a CLEC receives. It is clear that industry standards will solve this problem. Until then, the record indicates that the system is not perfect, but it works. Without an indication that service quality is affected, the record simply does not support the rejection of this checklist item for this reason.

Finally, the double-billing problem is the most serious problem relating to Ameritech's OSS. More than any other problem described in the record, double-billing will negatively affect the customer's perception of the service provider. A review of the record indicates that Ameritech has recognized the problem and taken steps to prevent this problem from occurring in the future. However, Ameritech has not provided any statistics to support this contention.

Having resolved these issues, we apply the standards espoused earlier in this Order for whether Ameritech "is providing" this item. The Commission concludes as follows:

With respect to the first standard, OSS is currently available and can be ordered immediately. Each of the interfaces is available and operational. A competing carrier can receive, within a reasonable time, the item in sufficient quantities and in a manner that will allow it to provide service to its own customers on a commercial basis.

With respect to the second standard, all systems necessary are in place allowing Ameritech to immediately provide OSS and in instances where a particular interface has been ordered or requested it is actually being furnished.

The third standard is also met in that thorough internal testing of OSS has been completed and where possible, carrier-to-carrier testing has also been completed. As

H.E. PROPOSED ORDER

stated above, carrier-to-carrier testing is not necessary to show that the interface is operational.

The fourth standard is what this entire analysis boils down to -- the issue being whether OSS can be provided to the requesting party on a non-discriminatory basis and at a quality level that is at parity with the quality that Ameritech itself receives. The Commission is of the opinion that when the word "parity" is used, whether in the 1996 Act or in this Order, it means reasonable parity and not exact parity. Parity must be interpreted to mean that any quality problems are within reasonable limits.

The record indicates that Ameritech's OSS is provided to competitors at a quality level that is within reasonable parity of the quality level that it provides to itself. The most troublesome component of all of the information that we have analyzed in making this conclusion is the amount of rejected orders when the ordering and provisioning interface is used. Rejected orders require that the process of entering the order must be repeated. This equates to delays. However, Ameritech's progress in bringing down this rejection rate is significant. From 34.4% in January, to 27.1% in February, to 12.7% in March, to 5.4% and to the most recent information available at the time of this order -- April 29 -- when Ameritech Illinois processed a one-day high of 3,830 resale orders -- only 1.4% were rejected.

The Commission is of the opinion that the rejection rate is within reasonable limits at this point in time. Ameritech must be cognizant that what is reasonable today may not be reasonable in the near future. This Commission is committed to seeing exact parity in service quality in the very near future. The evidence in the record indicates that this will be the case in the very near future.

In conclusion, the Commission is of the opinion that Ameritech's OSS is operational and, therefore, this item of the checklist is met.

b. Network Interface Devices

Ameritech

Ameritech contends that its Network Interface Device ("NID") offering fully satisfies the requirements of the Act and the FCC's regulations. NIDs serve as the point of connection between an Ameritech loop and an end user's inside wire. They also serve to provide lightning protection to the Ameritech loop. FCC regulation requires that Ameritech permit requesting carriers to access end user inside wire through a connection between their own NIDs and those of Ameritech. 47 C.F.R. § 51.319(b).

Ameritech notes that no party challenged its provision of NIDs as a network element during this proceeding. Upon request, it permits requesting telecommunications carriers to access end user customers' inside wires through the Ameritech NIDs. A requesting carrier may do so by installing NIDs at the end of its own loops connecting it to

H .E. PROPOSED ORDER

the Ameritech NIDs. Although thus far no party has requested access to Ameritech's NIDs on an unbundled basis, Ameritech provides such access through its interconnection agreements with MFS and CCT. Ameritech Ex. 2.2, Schedule 2. Accordingly, Ameritech requests that the Commission find that it has satisfied this aspect of the Checklist requirements.

Commission Conclusion

The Commission concludes that Ameritech is providing access to NIDs as required by the Act and FCC Regulations.

c. Dark Fiber

MCI

MCI contends that Ameritech is required to offer dark fiber as an unbundled network element. MCI witness Marzullo argues that dark fiber constitutes "equipment or facilities" used to provide transport within the meaning of Section 3(45), and thus is a network element for purposes of the Act. MCI Ex. 2.0 at 13.

Ameritech

Ameritech acknowledges that the Commission addressed this issue in the MCI arbitration, finding that dark fiber is a network element under the Act. MCI Arbitration Decision, 96-AB-006, .

3. Poles, Ducts, Conduits, and rights-of-way

Checklist item (iii) requires Ameritech to provide non-discriminatory access to the poles, ducts, conduits and rights-of-ways owned or controlled by it at just and reasonable rates in accordance with the requirements of Section 224.

AT&T

~~AT&T argues that "poles, ducts, conduits, and rights of way" should be defined broadly to include various "pathways" such as entrance facilities; riser ducts; controlled environmental vaults; telephone equipment closets; remote terminal buildings, huts, or enclosures; cross-connect cabinets, panels, or boxes; and various other property. AT&T Ex. 7.0 at 4-5. AT&T witness Lester maintains that a broad definition of structure is necessary to enable new entrants to use their own facilities to reach potential customers and thus to develop a competitive market. Id. at 5. It is suggested that a broad definition of structure is consistent with the FCC's Order, which states that the directive of Section 224(f)(1) "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of~~

H.E. PROPOSED ORDER

~~telecommunications and cable equipment by those seeking to compete in these fields." First Report and Order, ¶ 1123. AT&T contends that Ameritech's narrower definition of structure is inconsistent with the Act, and that Ameritech is improperly seeking to impose various discretionary operational and administrative hurdles on competing carriers to make obtaining access to facilities unduly difficult.~~

~~AT&T also testified that it has had difficulties in its several years of dealing with Ameritech in connection with AT&T's provision of long distance service. Id. at 25-26. AT&T witness Lester suggests that, in certain instances, Ameritech has denied access to its conduits, fallen short of AT&T's performance expectations or delayed in meeting its delivery dates, or imposed "make ready" costs as a means of passing on its own maintenance and repair costs. Id. 7.0 at 25-26. AT&T contends that Ameritech's history in this regard indicates that Ameritech may use its position to hamper the ability of new competing carriers to serve their customers. Id. at 26.~~

Staff

~~Early in this proceeding, Staff expressed a concern that Ameritech's testimony did not demonstrate whether any new entrants to the market currently were using its poles, ducts, conduits, and rights of way. Staff Ex. 3.02 at 6. Staff witness Gasparin recognized that Ameritech offers access to poles, ducts, conduits, and rights of way "from a contractual standpoint," but recommended that Ameritech provide a list of current and future parties attaching "from a usage standpoint." Staff Ex. 3.02 at 6. Absent such evidence, Staff suggested that Ameritech could satisfy the checklist requirement only on a "track B" basis. Id.~~

~~Staff subsequently noted that Ameritech has provided information on its actual provision of poles, ducts, conduits, and rights of way. Staff Ex. 3.02 at 4. Staff witness Gasparin acknowledged that Ameritech is providing such structure to CCT and that it has reached agreements to provide access to structure to MFS and TCG. Staff Ex. 3.02 at 4. Staff observed that Ameritech's Schedule 5 provided the quantity of conduit used by other carriers, but found that Schedule 5 did not provide data on the use of ducts, poles, or rights of way. Staff Ex. 3.02 at 4.~~

~~When Staff witness Terkeurst was cross-examined regarding whether Ameritech actually must furnish all of the items in checklist item (iii) in order to meet the checklist requirements, she stated that it was a judgment call, and that staff didn't "have a really firm policy on that at this time." Tr. 1474-75.~~

~~In its brief, Staff notes that Ameritech witness Dunny's Schedule 2 indicates Ameritech currently offers access to poles, conduits, and rights of way to CCT and has also reached agreement to offer access to these services to MFS and TCG. It is stated by Staff that, while ducts and conduits may serve the same function, as Ameritech indicates, the physical characteristics of the two may differ. Staff also observes that CCT witness Jennings testified that, while the CCT agreement addresses poles, ducts,~~

H.E. PROPOSED ORDER

~~conduits, and rights of way, CCT is using only poles at this time. Staff still takes no position in its brief with regard to whether Ameritech has met the requirements for the entire checklist item based on its provisioning of poles to CCT.~~

Ameritech

Ameritech contends that it satisfies the requirements of the Act by providing structure to attaching parties (1) on the same basis that it is provided to Ameritech (Section 271(c)(2)(B)(iii)), (2) at just and reasonable rates (id.), and (3) with the costs of any required modifications allocated in accordance with the FCC's rules (47 C.F.R. § 1.1416).

In direct testimony in phase I of this proceeding, Ameritech witness Bell explains that Ameritech facilitates nondiscriminatory access to its structure primarily in three ways: (1) by providing nondiscriminatory access to structure maps and records; (2) by using a fair methodology for allocating spare capacity between competing attaching parties; and (3) by assuring nondiscriminatory treatment in completing the process steps, such as surveying and construction work necessary to deliver structure to attaching parties. Ameritech Ex. 6.0 at 3-6. Mr. Bell explains that access requests are made to Ameritech's Structure Access Coordinator and are subject to a "first in time, first in right" priority queue, which applies to all carriers including Ameritech. Ameritech Id. at 10. Ameritech will deny access to structure only for reasons of safety, reliability, or engineering limitations, or if a request would be inconsistent with state or local laws, such as zoning ordinances. Ameritech testifies that, in such circumstances, it will meet with the attaching party before denying a request. Ameritech Id. at 10-12. This process ensures the most efficient allocation of existing capacity and prevents attaching parties from reserving capacity. AI Ex. 6.0 at 12-14. If no spare capacity exists at the time of a given request, Ameritech will modify the relevant structure and recover the costs of modification in accordance with the FCC's rules, which are incorporated in the SGAT. Ameritech Id. at 14-16. Moreover, requests are governed by a well-defined process detailed in Ameritech's structure leasing guidelines. Bell further develops this position in his rebuttal and live testimony. Ameritech Id. at 20-24; AI Ex. 6.1 at 16-17, 24-25; Tr. 427, 429.

In the rebuttal phase of this proceeding, Ameritech testifies that significant quantities of structure are already in use by attaching parties. Ameritech Id. at 14. In 1996, for example, Ameritech received over 300 requests for over 380 miles of conduit from AT&T alone — requests that were far greater, in scale and in scope, than any project Ameritech has completed for itself in a comparable time frame. Ameritech has administered those requests expeditiously, notwithstanding AT&T's frequent cancellations, changes in requirements and priorities, and failures to prioritize its requests. Ameritech Id. at 14-15. Ameritech also testifies, in the later phases of this proceeding, that it is providing structure to several other parties including CCT. Tr. 439-42; Ameritech Id. at 12.

H.E. PROPOSED ORDER

In Phase II of this proceeding, Ameritech addressed two issues regarding structure: (1) whether Ameritech Illinois is providing structure to any CLECs, aside from providing poles to CCT; and (2) whether Ameritech Illinois' definition of structure may be too narrow.

With respect to the first issue, as of January 1, 1997, Ameritech states that it had furnished poles, ducts and conduits to seven different carriers, and Ameritech Illinois continues to process additional structure access requests. Ameritech states that during 1996, Ameritech received more than 300 such requests in Illinois, of which approximately 70 percent have been completed. Moreover, Ameritech asserts that because all forms of structure serve the same purpose -- to support a carriers' facilities -- the issue of precisely which forms of structure have been furnished to which attaching party is not factually significant. Ameritech states that those choices will be driven by the facilities available, the routes involved and the engineering and business plans of the attaching parties.

With respect to the second issue, Ameritech states that the Commission has already approved Ameritech Illinois' definition of structure in both the AT&T and MCI arbitration decisions. That definition is also contained in Ameritech Illinois' SGAT. Moreover, as explained in detail in Ameritech Illinois' testimony, Ameritech Illinois' definition of structure also best reflects the language and intent of the FCC's First Report and Order. Neither Staff nor AT&T, which originally raised this issue, addressed it in supplemental testimony.

In its supplemental testimony, Staff raised two new legal issues related to Ameritech Illinois' Structure Access Guidelines. First, Staff claims that Ameritech Illinois has a legal obligation to build new structure where none currently exists. Second, Staff (and AT&T) contend that Ameritech Illinois should be required to provide attaching parties with structure information in addition to, or in formats different from, the information that Ameritech Illinois currently possesses.

Ameritech contends that Staff's first argument is based on a fundamental misreading of the Act and the FCC's First Report and Order. Ameritech argues that the purpose of Section 224(f) of the Act (the source of the duty to provide access to structure) is to "permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities..." First Report and Order ¶ 1185. This section of the Act reflects the "economic factors and space considerations" that may justify allowing new entrants to "piggyback" on existing structure, where available, rather than building new structure of their own. Id. at ¶ 1125. However, Ameritech states that where the utility does not own or control any structure of the type desired by the attaching party, such economic and space considerations are not present. Ameritech maintains that if new structure is going to be built, the incumbent utility has no necessary advantage over any other party in performing the construction.

Ameritech contends that it is for these reasons that Sections 224(f) and 271(c)(2)(B)(iii) of the Act are each expressly limited to structure that is "owned or

H .E. PROPOSED ORDER

controlled" by the utility. 47 U.S.C. §§ 224(f)(1), 271(c)(2)(B)(iii). Ameritech asserts that structure that does not exist is not "owned or controlled" by Ameritech Illinois.

Ameritech notes that its approved interconnection agreements generally contain the same limitation to which Staff now objects. Moreover, Ameritech contends that the Commission has already approved the AT&T and Sprint agreements, specifically finding that those agreements comply with Sections 252(e)(2)(A) and (B) of the Act.

In addition, during the supplemental proceedings, Ameritech presented a document entitled the Ameritech Structure Access Guidelines which defines the process by which an attaching party (new LEC) obtains access to Ameritech's poles, ducts, conduits and right-of-ways. Staff stated that certain portions of these guidelines are discriminatory to new entrants as they place restrictions on the new LECs, or do not treat new LECs as Ameritech would treat itself. As a result, the Commission should not find Ameritech in compliance with checklist item (iii) until these portions of the guidelines are modified.

Specifically, Staff cites five different sections of these guidelines as problematic:

On page 13, Item 6.21 of the Structure Access Guidelines, it states that Ameritech is not required to construct ducts, interducts and conduits in locations where these items do not currently exist for an attaching party. Staff identified that in the FCC Order at ¶ 1162, a utility is to expand capacity for requesting carriers as it would provide these facilities to itself if required. Staff concludes that this section of the guidelines violates the FCC Order.

On page 7, Section 3.02 of the Ameritech Structure Access Guidelines, the company states that it will "not create additional information or provide information in formats other than that in which it currently exists". Further, that Section states that Ameritech personnel representatives will not be required to make field visits to gather any additional information not currently available on maps and/or records. Staff contends that these limitations are discriminatory in that Ameritech would provide this information to itself if required.

On page 7, Section 3.03 of the Structure Access Guidelines, Ameritech provides limiting language regarding confidential and proprietary information. This language provides that if records and/or maps contain confidential and/or proprietary information, Ameritech will expunge such information prior to providing the documents to the attaching party and will provide a cost estimate for the preparation of the information. Staff stated that the type of information that would be expunged could only be determined on a case-by-case basis. Staff did state that the attaching party may very well agree to confidentiality agreements to secure the information. If this is the case, Staff contends that Ameritech should not expunge the information or charge the party for expunging the information.

H.E. PROPOSED ORDER

On page 8, Section 3.7 of the Structure Access Guidelines, Ameritech states that it will not make copies available if they are not mechanized. Staff and AT&T contend that Ameritech would provide this information to itself if needed. Staff further concluded that, although the costs for making these types of reproductions may be greater than a mechanized system, the process is available and the costs of such documents would be paid for by the attaching party.

On page 18, Section 7.18 of Ameritech's Structure Access Guidelines, the company states that it will not be required to construct or acquire additional poles in locations where the company's poles do not currently exist in order to provide attachment to the attaching party. The company further states that it may consider constructing or acquiring such extensions upon request.

Upon reviewing the FCC Orders at ¶1161, 1162 and 1163, Staff contends that Ameritech is required to take all reasonable steps to accommodate requests for access, including construction or acquisition of additional poles. Clearly, Ameritech would provide additional poles to itself if required, except for expansions or acquisitions that would cause safety concerns.

Ameritech responds that Staff's allegation that Ameritech would provide different or additional information to itself or its affiliates is simply incorrect. The information provided to attaching parties is comparable to that provided to Ameritech Illinois' own engineers. In addition, Ameritech states that it does, in fact, perform field surveys for attaching parties. Moreover, Ameritech contends that some reasonable limitation on the formats provided is necessitated by the large number of potential attaching parties and database formats. Ameritech argues that the provision in question is an agreed term of the Structure Access Guidelines being used by Ameritech Illinois and AT&T and is reasonable and nondiscriminatory.

With respect to the provision of the guidelines allowing attaching parties to have access to, but not to make copies of, structure maps and related graphic materials, Ameritech argues that AT&T raised precisely this same issue in its arbitration proceeding -- to which Staff was a party -- and the Commission expressly rejected it, finding that AT&T "failed to prove why access alone is insufficient to allow it to make reasonable decisions concerning the use of structure." AT&T Arbitration Decision, p. 52. Ameritech argues that neither AT&T nor Staff has provided any evidence to warrant a different conclusion.

AT&T argues that a number of problems plague AT&T's efforts to gain competitive access to Ameritech's poles, ducts, conduits and rights-of-way. AT&T states that the fundamental problem is the absence of completed "structure access guidelines," which are supposed to be negotiated by Ameritech and AT&T pursuant to their Illinois Interconnection Agreement. AT&T witness Mr. Bell testified that Ameritech has published its own structure access guidelines, but Mr. Lester explained that these unilateral guidelines are not binding on any attaching third party. AT&T states that it and Ameritech

H .E. PROPOSED ORDER

remain significantly apart on their negotiations regarding many structure access key issues, including, (i) deciding whether AT&T's own personnel may assist in the "make ready" and other labor-intensive work to expedite the access process; (ii) establishing disaster recovery procedures; (iii) determining a methodology for cost-sharing when other parties attach to structure for which AT&T has paid the make ready costs; (iv) establishing rates to be charged in connection with survey and map preparation, and labor costs for responding to AT&T

AT&T also complains that Ameritech is creating substantial time delays and costs for AT&T throughout the structure access process. AT&T argues that Ameritech has refused to commit to timelines related to when structure would be "made ready" after an appropriate request. AT&T's states that its requests are left to Ameritech's mercy, with the effect that AT&T is unable to efficiently perform preparatory work.

~~_____ Ameritech maintains that AT&T's definition of the term "right of way" is overly broad and encompasses virtually every legal interest in property that Ameritech owns or controls. Ameritech Ex. 6.1 at 3. Mr. Bell states in his rebuttal testimony that this extreme definition is inconsistent with both the Act's purposes and the FCC's Order, which declares that "[t]he intent of Congress in section 244(f) was to permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility." First Report and Order, ¶ 1185. Ameritech also notes that AT&T's broad definition of rights of way has been rejected by this Commission. Dockets 96 AB 003 & 96 AB 004, Order at 29.~~

Commission Conclusion

The Commission is convinced that Ameritech Illinois is providing nondiscriminatory access to its poles, ducts, conduit and rights-of-way in accordance with the Act and First Report and Order.

The concerns raised by Staff and AT&T in the supplemental portion of this proceeding are not persuasive. First, Staff's claim that Ameritech Illinois has a legal obligation to build new Structure where none currently exists is based on a misreading of the Act and the FCC's First Report and Order. As the FCC observed, the purpose of Section 224(f) of the Act (the source of the duty to provide access to Structure) is to "permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities. . . .", First Report and Order ¶1185.

Moreover, Ameritech Illinois' approved interconnection agreements generally contain the same limitation to which Staff now objects. None of the interconnecting carriers have objected to that provision. Moreover, the Commission has already approved the AT&T and Sprint agreements, specifically finding that those agreements comply with Sections 252(e)(2)(A) and (B) of the Act. This Commission finds that no reason has been presented to it to change its view on this matter.

Second, Staff's (and AT&T's) contention that Ameritech Illinois should be required to provide attaching parties with Structure information in addition to, or in formats different from, the information that Ameritech Illinois currently possesses is inconsistent with the Act. The information provided by Ameritech Illinois to attaching parties is comparable to that provided to itself and satisfies the nondiscrimination requirement of the Act..

Both Staff and AT&T also object to a provision of the Structure Access Guidelines allowing attaching parties to have access to, but not to make copies of, Structure maps and related graphic materials. Again, this issue is not new to the Commission -- AT&T raised precisely this same issue in its arbitration proceeding (to which Staff was a party) and the Commission expressly rejected it, finding that AT&T "failed to prove why access alone is insufficient to allow it to make reasonable decisions concerning the use of Structure." AT&T Arbitration Decision, p.52. Neither AT&T nor Staff has provided any evidence to warrant a different conclusion.

Finally, the other provisions of the guidelines to which Staff and AT&T object are all reasonable, nondiscriminatory and consistent with the Act and First Report and Order. The procedure set forth in the Structure Access Guidelines provides a reasonable and nondiscriminatory mechanism for providing access to Structure and meets Ameritech Illinois' requirements under the Act.

Based on the evidence presented by the parties to this proceeding, the Commission is satisfied that Ameritech Illinois has met this checklist item.

~~———— This is an item that, like OSS, unforeseen problems can arise between Ameritech and a competing provider. Other than providing poles to CGT, Ameritech has not furnished poles, ducts, conduits or rights of way to any competing provider. At this point, the Commission is of the opinion that we cannot find that this checklist item is met based upon the Ameritech's provisioning of poles to CGT.~~

~~———— We are especially concerned about Ameritech's definition of structure which may be too narrow and, thus, may be inconsistent with the FCC's Order, which states that the directive of section 224(f)(1) of the Act "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in these fields." First Report and Order, ¶ 1123.~~

4. Unbundled Local Loops

Checklist item (iv) requires Ameritech to provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. Section 51.319(a) of the FCC's Order defines a local loop network element as a cross-connect device used to connect loop facilities to inside wiring.

Staff

Staff states that based on the record evidence, Ameritech is providing local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

Staff contends that the next inquiry is whether the manner in which Ameritech is providing local loops is consistent with the terms and conditions required by the 1996 Act, the FCC's Order and/or Commission Orders and Rules. With respect to this issue, Staff notes that on June 15, 1996, CCT filed an informal complaint regarding the local loop service installation intervals by Ameritech for CCT customers. Ameritech responded to the complaint on June 27, 1996.

Staff refers to the cross examination of CCT witness Scott Jennings, who testified that in May to June of 1996, CCT received complaints from consumers that it took Ameritech less time to provide service than it took CCT to provide service. He stated that Ameritech used this as a marketing tool to its customers. Tr. 849, lines 10-22. He did state that in his opinion, Ameritech's performance had improved since the May to June time period referenced in his testimony. He also stated that he did not believe that the performance criteria set forth in CCT's contract for the provisioning of unbundled loops was at parity with the time in which Ameritech provides unbundled loops to itself. Scott Jennings Cross, Tr. 860, lines 2-8; Tr. 857-60, through line 1.

Staff further states that while Ameritech provides unbundled loops to CCT through its agreement, there is no record evidence regarding whether the interconnection terms and conditions are consistent with the FCC requirements. Staff further states that the prices are not in compliance with Section 252(d), as is the case with network elements. Because of this, Staff recommends that the Commission find that Ameritech does not meet the checklist requirements for unbundled local loop transmission.

CCT

Although CCT witness Jennings addressed several loop provisioning issues in his pre-filed testimony, his subsequent testimony provides a substantial update and indicates that many of the issues have been resolved. Among the remaining issues, CCT stated that Ameritech does not apply the same standards to itself for the provisioning of an unbundled network access line as it does for the provisioning of an unbundled loop to CCT. Tr. 860. CCT further testified that Ameritech does not satisfy the performance objective of restoring service within a 24-hour period. Tr. 862-63.

MFS

In its brief, MFS argues that the provisioning delays that Ameritech's competitors have experienced in obtaining access to unbundled elements, including loops, precludes competitors from offering service as attractive to customers as Ameritech's service, and

H. E. PROPOSED ORDER

therefore precludes a finding of nondiscriminatory access. MFS maintains that it too has had problems resolving provisioning issues with Ameritech, including unreasonably long provisioning intervals for DS1s and DS1, DS3, and ISDN cross connects; unreasonably long processing and installation; and shortages of personnel. As to Ameritech's testimony that its standard provisioning intervals for 1 to 4 DS1 loops was five business days, MFS contends that it has not received such efficient service. MFS Brief at 7-10. It is argued that, because Ameritech does not compare provisioning intervals and maintenance times for services that it provides both to itself and to its competitors, the Commission has no way of measuring Ameritech's performance. Until Ameritech can provide such data, MFS argues that the Commission should not find that it has satisfied the checklist. MFS Brief at 10-11.

MFS also proposes in its brief that Ameritech should be required to establish a separate affiliate to provision loops. MFS Brief at 11-14. MFS suggests that Ameritech's performance reports will be insufficient to ensure nondiscriminatory access, but that the possibility for discrimination would significantly decrease if Ameritech provided loops through an affiliate.

Sprint

In its brief, Sprint maintains that the testimony of CCT and MFS, companies already competing with Ameritech, demonstrates that Ameritech does not satisfy the checklist. Sprint points to the testimony of CCT witness Jennings, and to the testimony of MFS witness Durbin. Sprint Brief at 17-18 (citing MFS Ex. 1.0 at 26; CCT Ex. 1.0 at 8-9, 11-14; CCT Ex. 2.0 at 3-4).

TCG

In its brief, Teleport Communications Group echoed concerns similar to those raised by CCT. In reliance upon the testimony of AT&T witness Fonteix, TCG argues that Ameritech is attempting to control the growth of its competitors by establishing lengthy provisioning intervals for unbundled loops. TCG suggests that a lack of standards and a lack of deadlines permits Ameritech to avoid accountability for its failures to provide requested services in a timely manner. TCG Brief at 12 (citing AT&T Ex. 5.0 at 16-17).

Ameritech

Ameritech states that it offers documentation indicating that it currently furnishes unbundled loops to both MFS and CCT under negotiated agreements with each carrier. It states that it has already has provisioned 6,600 loops to CCT, and provides access to eight different unbundled loop types pursuant to the AT&T Agreement (and MFN clauses of other interconnection agreements) and to other loop types through a bona fide request process. Ameritech Ex. 2.2, Schedule 1, at 4; Tr. 871. Ameritech states that each of its loop offerings provides a transmission path beginning at a distribution frame, or its equivalent, located in an Ameritech central office and ending at a NID at the end user's

H.E. PROPOSED ORDER

premises. Thus, it argues, these loop offerings fully comply with the applicable FCC Regulation, 47 C.F.R. § 51.319(a).

In response to CCT's complaint that Ameritech applies different standards for the provisioning of an unbundled network access line to its own customers than it does for the provisioning of an unbundled loop to CCT, Ameritech argues that, operationally, an unbundled network element — such as a loop — cannot reasonably be compared to bundled services — such as a network access line — that Ameritech provides to its end users. It asserts that its unbundled network access line connects a loop to central office equipment to provide "port" functions such as dial tone, access to the switched network and vertical features, as well as the ability to originate and receive calls. In contrast, it states that an unbundled loop provides only the functions associated with the loop while providing none of the port functions provided by a network access line. Moreover, it is contended, the provisioning of unbundled loops requires special steps, because more than one carrier is necessarily involved in providing local exchange service to the end user customer. These steps relate to the coordination of loop installation with other requests such as disconnection of related exchange services or the simultaneous establishment of number portability. Ameritech Ex. 3 at 32. Accordingly, Ameritech and CCT have agreed to specific provisioning intervals for unbundled loops that do not entail a comparison with bundled service provision intervals. Ameritech Ex. 2.2, Schedule 5, at 41. Accordingly, Ameritech and CCT have agreed to specific provisioning intervals for unbundled loops that do not entail a comparison with bundled service provision intervals. Ameritech Ex. 2.2, Schedule 5, at 41.

With respect to CCT's statement that Ameritech Illinois is not satisfying the performance objective of restoring service within a 24-hour period, Ameritech replies that in December 1996, the month the CCT agreement was signed, it completed repairs within 24 hours 79% of the time — a number consistent with the requirement in the agreement that repairs be completed within 24 hours an average of 80% of the time, and that the 24-hour repair rate not drop below 60% in any given month.

In the supplemental phase of this proceeding, Ameritech Illinois submitted additional reports that it states demonstrate that it is now providing high quality and nondiscriminatory access to unbundled loops. Ameritech Illinois explains that provisioning unbundled loops and provisioning bundled local service do not lend themselves to an "apples to apples" comparison - in that the provision of unbundled loops requires manual labor at the central office and, in most cases, coordination with the requesting carrier, whereas provision of bundled retail service requires neither such labor nor such coordination. Thus, Ameritech Illinois argues that even if the Commission concludes that Ameritech Illinois' loop provisioning performance does not compare favorably with its bundled retail provisioning performance, that would not support a finding that Ameritech Illinois has not complied with checklist item (iv).

Ameritech Illinois nonetheless suggests that its performance meets any reasonable parity standard - whether one compares Ameritech Illinois' loops performance

H.E. PROPOSED ORDER

for CCT with its loops performance for other CLECs as a whole, or Ameritech Illinois' loops performance with its retail performance. Ameritech states that the 1997 reported data demonstrate that Ameritech Illinois is performing for CCT at levels similar to its performance for all CLECs. Ameritech further states that in January, for example, Ameritech Illinois missed 13.5% of its provisioning due dates for CCT, while missing 10.3 percent of such due dates for all CLECs. Am. Ill. Ex. 8.2, Schedules 11-12. Ameritech asserts that these numbers have improved substantially. Ameritech further states that in March, for example, Ameritech Illinois missed 1.6% of provisioning due dates for all CLECs, while missing only 2.2% of such due dates for CCT. Id. Thus, Ameritech states that the the 1997 percentage of due dates missed for CCT as of March 31, 1997 - representing 145 of 2127 orders - was only 6.8%. Ameritech maintains that given that the 1997 percentage of missed due dates for all CLECs as of the same date - 5.6% - was based on more than three times as many orders (7,379), a disparity of 1.2 percentage points is entirely reasonable. Id. In short, Ameritech argues that its performance well exceeds the CCT Agreement standards, which require that Ameritech Illinois timely provision at least 80% of CCT orders for unbundled loops. Am. Ill. Ex. 8.1, pp.3-4.

In addition, Ameritech contends that the timeliness of Ameritech Illinois' loop provisioning performance also compares quite favorably with the timeliness of its bundled resale performance. Ameritech cites the fact that in February 1997, for example, Ameritech Illinois missed the due dates for 1.7% of CCT's orders for unbundled loops, while missing the due dates for 0.9% of Ameritech Illinois Retail orders for POTS service. Am. Ill. Ex. 8.2, Schedules 12, 4. Likewise, in March 1997, Ameritech Illinois missed the due dates for 2.2% of CCT's orders for unbundled loops, while missing the due dates for 1.0% of Ameritech Illinois Retail orders for POTS service. Id. Ameritech states that given the relatively limited volumes of CCT's orders - 686 (February) and 546 (March), compared with 2521 (February) and 4419 (March) for Ameritech Illinois Retail - these differentials - 0.8 to 1.2 percentage points - are insignificant.

Commission Conclusion

The evidence submitted by Ameritech clearly indicates that it is providing unbundled loops to requesting parties on a non-discriminatory basis and at a quality level that is at parity with the quality that it itself receives. Accordingly, the Commission finds that Ameritech Illinois has satisfied the requirements for checklist item (iv), unbundled loops.

~~The Commission finds that Ameritech has not established that it satisfies the checklist requirements for provision of unbundled loops. At this point in time, we are concerned about the provisioning delays that Ameritech competitors have experienced in obtaining access to unbundled elements, including loops, precludes competitors from offering service as attractive to customers as Ameritech Illinois' service. As previously stated in this Order, this Commission must be confident that the item can be provided to the requesting party on a non-discriminatory basis and at a quality level that is at parity with the quality that it itself receives. This is not the case at this point in time.~~

5. Unbundled Local Transport

Checklist item (v) requires Ameritech Illinois to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

~~_____ In its brief, Staff argues that, while Ameritech provides unbundled local transport to CCT through its special access tariff, the only evidence regarding whether the terms and conditions on which it is provided are consistent with the FCC's Order is Ameritech Witness Dunny's statement that "[i]t would be my opinion it would be." Tr. 542. Further, Staff states, Ameritech's prices are higher than Section 252(d) requires. Staff Brief at 74 (citing Staff Ex. 4.00 at 18). Also, in Staff's view, Section 271(c)(1)(A) contemplates that the checklist items would be provided pursuant to binding agreements that have been approved under Section 252, rather than under an access tariff — unless the tariff has been incorporated into an agreement. In light of these factors, Staff recommends that the Commission find that Ameritech has not met the checklist requirements for unbundled local transport.~~

Ameritech

Ameritech contends that its offering of unbundled local transport fully complies with the competitive checklist, as well as FCC rules. It notes that Section 271(c)(2)(B)(v) requires provision of local transport "from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services," and asserts that trunk side local transport is precisely what it is providing. Ameritech also maintains that the term "Interoffice Transmission Facilities," as used in 47 C.F.R. § 51.319(d), and "Local Transport," as used in Section 271 of the Act, are the same thing. Ameritech Ex. 2.2 at 6. It suggests that it satisfies that provision by (1) offering both dedicated and shared transport, (2) offering all technically feasible transmission facilities, features, functions, and capabilities that have been requested by other carriers, either through negotiation or a Bona Fide Request process, (3) providing all technically feasible connections that have been requested by other carriers, and (4) offering its tariffed digital cross connect service, Ameritech Illinois Network Reconfiguration service (ANRS), for use with unbundled local transport — exactly the same tariffed service provided to interexchange carriers. Id. Ex. 2.2 at 7-9.

Ameritech presented evidence that it currently provides unbundled local transport to TCG, MFS, and CCT pursuant to its special access tariff. Id., Schedule 1, at 9-10; Id., Ex. 2.2, Schedule 2, at 5. In addition, Ameritech explains that it makes unbundled local transport available to other carriers via the MFN provisions of its interconnection agreements with those carriers. Id., Schedule 1, at 9-10; Id., Schedule 2, at 5. Ameritech contends that purchases of such elements cannot be separated from purchases of the same elements by the same carriers for other purposes, such as the provision of

H.E. PROPOSED ORDER

interstate access service under the FCC's expanded interconnection rules. Id., at 5. Over time carriers will obtain local transport under their interconnection agreements.

In lieu of providing common transport, Ameritech has developed a new transport option entitled Shared Company Transport. Under this arrangement, new LECs may obtain dedicated transport services at less than DS-1 levels up to a total of 23 trunks. At 23 trunks, the new LEC would subscribe to a DS-1 service which provides the equivalent of 24 voice grade channels. The company has developed two billing options for this service. One billing option is based on a flat-rate, per trunk monthly charge that is 1/24 of the DS-1 rate for each trunk and the other is a usage sensitive option based on minutes of use. This service will not carry traffic over Ameritech's existing switched interoffice network, but will provide services over dedicated facilities. Ameritech Illinois Ex. 1.4 at 6-9.

Ameritech further stated that the real objective requiring the demand for common transport is related to price and nothing else. Ameritech Illinois Ex. 1.5 at 2. Ameritech claims that the new LECs are asking for precisely the same unbundled services that are already available today through Ameritech Illinois' wholesale and carrier access service offerings. Ameritech claims that the new LECs expect Ameritech to originate, route and terminate their traffic with no engineering or planning responsibilities of any kind on their part. Ameritech Illinois Ex. 1.5 at 2-3. Ameritech claims that its service options of Shared Carrier Transport and the new Shared Company Transport establish direct end office to end office trunks and provide ample ability and incentive for an efficient network to be maintained. Further, Ameritech states that speculations by AT&T of exhausted tandems and network blockage would only occur if a network design that is inefficient from both an economic and engineering standpoint would be put in place. Ameritech Illinois Ex. 1.5 at 5-6.

Both AT&T and Staff have stated that common transport is a network element and therefore should be available for use by new LECs and that the option developed by Ameritech entitled Shared Company Transport does not satisfy the requirements of the Act for the provisioning of call transport. Further, both AT&T and Staff are very concerned that the option offered by Ameritech may not be technically feasible under existing network designs.

AT&T contends that common transport is a network element and identifies the FCC statement regarding transport that states:

For some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period, such as on a monthly basis. Carriers seeking other elements, especially shared facilities such as common transport, are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis."
FCC First Report and Order, ¶ 258. AT&T Ex. 9.0 at 3-4.

H.E. PROPOSED ORDER

AT&T responds to Ameritech's contention that common transport is not a network element because it combines functionalities by referencing other unbundled local switching elements that also combine functionalities. AT&T gives examples for local switching which also include signaling and databases. AT&T further points out signaling which also requires associated links and signal transfer points. Further, AT&T points out Section 251(c)(3) of the Act that makes explicit that "an incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service". AT&T Ex. 9.0 at 5.

AT&T further states that other Bell operating companies have allowed for the provisioning of common transport. These companies are Southwestern Bell, U.S. West and Bell Atlantic. AT&T Ex. 9.0 at 6-7.

In response to Ameritech's proposal of Shared Company Transport, AT&T contends that this service is not a shared transport at all, but rather an option for the purchasing of dedicated transport on a circuit-by-circuit basis at a DS-0 level. Therefore, new LEC traffic will not be carried over Ameritech's existing switched network, but instead over a separate dedicated facility provisioned for new LECs' use. Further, AT&T stated that CLECs are still required to order dedicated transport between end offices where end user customers are served and all of Ameritech tandem switches. AT&T Ex. 9.0 at 7-8. AT&T concluded that the new Shared Company Transport option would require each new LEC to design and build its own overlaying network from scratch through the purchase of dedicated trunks according to AT&T that would entail unnecessary and costly duplication of existing network facilities. AT&T Staff Ex. 9.0 at 10.

Staff contends that common transport is a network element based on the FCC Order and the Act's definition of a network element contained in Section 152(29) which defines the network element as follows:

A facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, database signaling systems, and information sufficient for billing and collections or used in the transmission, routing, or other provision of a telecommunications service.

Because common transport is used by Ameritech in the transmission and provisioning of a telecommunications service, Staff contends that common transport is a network element. ICC Staff Ex. 3.03 at 8-9.

Staff further contends that there are no technical constraints that would prevent Ameritech from providing access to common transport as a network element. ICC Staff Ex. 3.03 at 9.

H.E. PROPOSED ORDER

In response to Ameritech's contention that common transport could not be unbundled from transport and switching, Staff quoted the Order at ¶1010 which states:

We conclude for a combination of a flat-rated charge for line ports, which are dedicated to a single new entrant, an either a flat rate or per-minute usage charge for the switching matrix and for trunk ports, which constitute shared facilities, best reflects the way costs for unbundled local switching are incurred and is therefore reasonable.

Therefore, Staff concludes that the FCC intended for elements to be combined and for common transport to be offered as an unbundled network element. ICC Staff Ex. 3.03 at 10. Further, Staff stated that the FCC definition of interoffice transmission facilities as they may relate to common transport as follows:

Incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 CFR §51.319(d).

Staff registered its concerns regarding the provisioning of Ameritech's Shared Company Transport by questioning whether an IXC would have to determine whether each call is being made to a customer of a new LEC. If this is the case, use of a separate database comparable to the database required for permanent number portability would have to be provided by each IXC to terminate the call. This database would have to be developed and maintained at each IXC point of presence, rather than the existing routing processes used for common or dedicated transport to the incumbent LEC switch. The costs of developing the new routing procedure would be burdensome to the new LECs and IXCs. ICC Staff Ex. 3.03 at 13-14.

AT&T witness, Mr. Robert Sherry, concurred with Staff's assertion by stating: If an interexchange carrier were to deliver calls to a LEC, they would have to have something, as Mr. Gasparin points out, to figure out whether to deliver that down a shared transport or dedicated transport that the CLEC provides or through Ameritech's transport down to the customer.

And so something like this database or other means that an interexchange carrier would have to determine would be required." Tr. 2053.

Mr. Sherry further stated that "Such changes may be technically feasible, but would be extremely cumbersome from the interexchange standpoint, especially since the